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Endicott Forging & Manufacturing, Inc. and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO. Case 3-CA-19889

August 29, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

Upon a charge filed on February 12, 1996, the General Counsel of the National Labor Relations Board issued a complaint on April 9, 1996, against Endicott Forging & Manufacturing, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On August 9, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On August 12, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 12, 1996, notified the Respondent that unless an answer was received by July 19, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business located at 1901 North Street, Endicott, New York, has been engaged in the manufacture and sale of metal forging. During the

12 months preceding issuance of the complaint, Respondent purchased and received goods and materials valued in excess of \$50,000 which were shipped to its Endicott facility directly from points located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO (Local Union No. 1101), the Union, has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All employees in production and maintenance (but excluding the die department, office, clerical employees, and all supervisors, foremen and assistant foremen in charge of any classes of employees) for whom the union, is or may be, during the term of this agreement, certified by the National Labor Relations Board as the exclusive collective bargaining representative as determined by the election conducted by the National Labor Relations Board of November 28, 1944.

Since about 1944, and at all times thereafter, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a series of collective-bargaining agreements, the most recent of which has a term of May 20, 1995, to May 24, 1996. At all times since 1944, based on Section 9(b) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about August 20, 1995, and continuing thereafter, the Respondent has failed and refused to make required payments into the contractual 401(k) pension plan. Since about the same date, and continuing thereafter, Respondent has also failed and refused to remit loan repayments from employees into the contractual 401(k) pension plan. Since about November 20, 1995, and continuing thereafter, the Respondent has failed and refused to make the annual and quarterly contractual bonus payments. The Respondent engaged in the conduct described above without the Union's consent. The terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining.

Since about November 30, 1995, in writing, the Union has requested a list of the names of all present and former unit employees whose loan repayments, via payroll deduction into the 401(k) plan, have not been

deposited by the Respondent to employee accounts, and the dates and the amounts of the loan payments deducted from employees' paychecks that were not forwarded and deposited to their respective 401(k) accounts. This information is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about November 30, 1995, the Respondent has failed and refused to furnish the Union with the requested information.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing, since August 20, 1995, to make required payments and to remit loan repayments from employees into the contractual 401(k) pension plan, we shall order the Respondent to make all required payments and remit any such loan repayments into the 401(k) pension plan, including any additional amounts due the plan in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse the employees for any expenses incurred as a result of its unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent has failed and refused since November 20, 1995, to make annual and quarterly contractual bonus payments, we shall order the Respondent to make such payments and to make the unit employees whole for any loss of earnings resulting from its refusal to do so. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1979), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent has failed and refused to supply necessary and relevant information requested by the Union, we shall order the Re-

spondent to furnish the Union with the information requested.

ORDER

The National Labor Relations Board orders that the Respondent, Endicott Forging & Manufacturing, Inc., Endicott, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to make payments into the contractual 401(k) pension plan for employees in the following bargaining unit:

All employees in production and maintenance (but excluding the die department, office, clerical employees, and all supervisors, foremen and assistant foremen in charge of any classes of employees) for whom the union, is or may be, during the term of this agreement, certified by the National Labor Relations Board as the exclusive collective bargaining representative as determined by the election conducted by the National Labor Relations Board of November 28, 1944.

(b) Failing and refusing to remit loan repayments from employees into the contractual 401(k) pension plan.

(c) Failing and refusing to make annual and quarterly contractual bonus payments.

(d) Failing and refusing to provide necessary and relevant information requested by International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all required payments and remit any loan repayments from employees into the contractual 401(k) pension plan that have not been made or remitted since August 20, 1995, and reimburse the unit employees for any expenses incurred as a result of its unlawful conduct, with interest, as set forth in the remedy section of this decision.

(b) Make annual and quarterly contractual bonus payments, and make the unit employees whole for its failure to do so since November 20, 1995, with interest, as set forth in the remedy section of this decision.

(c) Furnish the Union with the information it requested on November 30, 1995.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Endicott, New York, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 12, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 29, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to make payments into the contractual 401(k) pension plan for employees in the following bargaining unit:

All employees in production and maintenance (but excluding the die department, office, clerical employees, and all supervisors, foremen and assistant foremen in charge of any classes of employees) for whom the union, is or may be, during the term of this agreement, certified by the National Labor Relations Board as the exclusive collective bargaining representative as determined by the election conducted by the National Labor Relations Board of November 28, 1944.

WE WILL NOT fail or refuse to remit loan repayments from employees into the contractual 401(k) pension plan.

WE WILL NOT fail or refuse to make annual and quarterly contractual bonus payments.

WE WILL NOT fail or refuse to provide necessary and relevant information requested by International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all required payments and remit any loan repayments from employees into the contractual 401(k) pension plan that have not been made or remitted since August 20, 1995, and WE WILL reimburse the unit employees for any expenses incurred as a result of our unlawful conduct, with interest.

WE WILL make annual and quarterly contractual bonus payments, and WE WILL make the unit employees whole for any loss of earnings resulting from our failure to do so since November 20, 1995, with interest.

WE WILL furnish the Union with the information it requested on November 30, 1995.

ENDICOTT FORGING & MANUFACTURING, INC.